

From: Joel Martin
To: Microsoft ATR
Date: 1/23/02 10:49am
Subject: Microsoft Settlement

To: United States Department of Justice
From: Joel Martin

I would like to comment on the Proposed Final Judgement in the United States vs. Microsoft according to the terms of the Tunney Act.

INTRODUCTION:

The Proposed Final Judgement (PFJ) does almost nothing to limit Microsoft's illegal practices. In fact, many aspects of the PFJ encourage Microsoft to continue in their long history of limiting competition and harming the public good. The problems with the PFJ are so numerous that the entire PFJ should be scrapped and re-written. In this document I will enumerate a subset of the many problems with the PFJ.

DEFINITIONS (PFJ section IV):

API - API is so narrowly defined that Microsoft will simply change their naming scheme to evade the remedies. API should be defined in the industry accepted manner to include all interfaces to all software products that Microsoft distributes.

Microsoft Middleware Product - at the very least this list should include all of Microsoft's .NET family of products. A more reasonable change would be to actually define this so that new middleware products that Microsoft introduces are covered by this definition.

Windows Operating System Product - again, the definition in the PFJ is a list of specific products. First of all, this term should be changed to "Operating System Product". A proper definition should be developed that covers all Windows XP versions, all Windows 2000 versions, all portable versions of Windows such as Windows XP tablet PC and the X-Box Operating System. All of these products need to be covered so that the judgement protects and corrects now and into the future.

ACTIONS TOWARDS THIRD PARTIES:

The remedies outlined in the PFJ that apply to Microsoft's actions towards other parties need to be expanded and strengthened. In the current form it is impotent and narrow. Microsoft should not be able

to punish any OEM or third party for the way they customize their systems with or without Microsoft software. Microsoft should be required to publish their prices for all OEM's and third parties, NOT just the largest 20 OEMs as stated in the PFJ. Also, Microsoft should be prohibited from retaliating against OEMs and third parties in other ways than just price gouging. For example, Microsoft should not be allowed to give discounts on other products to OEMs that do not sell pre-configured systems with alternate operating systems.

One particularly glaring problem in the PFJ is Section III.A.2 which allows Microsoft to retaliate against an OEM that sells systems with a competing Operating System but no Microsoft Operating System. This hole in the PFJ is subtle but pernicious and is reason enough to nullify this version of the PFJ.

EULAS (End User Licenses):

Microsoft has a history of using EULAs to create fear and uncertainty for competitors. These agreements regularly prohibit interoperability, exclude Open Source products, and the prohibit the development of certain types of competing and interoperating products. The PFJ does not address this issue of Microsoft's anti-competitive EULAs.

PROPOSED CHANGES:

The list of problems goes on and on but I will conclude with some recommendation for some additions to the PFJ that may help get this document to a state that will actually contribute to the public good.

- Microsoft must fully document all their APIs including the following: all OS APIs and OS utility APIs including the Windows Installer, Internet Explorer APIs, Outlook APIs, all Office APIs, the DirectX suite of APIs, etc.
- Microsoft must document all document formats fully. This includes the following document formats: MS Word, MS Powerpoint, MS Excel, MS Visio, MS Publisher, MS Project, etc.
- Microsoft must fully document their network protocols including: Outlook to Exchange, SMB/CIFS protocol, Advanced Directory services, etc.
- Microsoft must provide the above documentation on APIs in a reasonable time frame. This means that the documentation must be available to competitors as soon as it is available to other product groups within Microsoft to do development. This will prevent other product groups within Microsoft from having an unfair lead time on product development compared to Microsoft competitors.
- Microsoft must port all their major desktop applications to non-Microsoft Operating Products that hold the three largest desktop

market shares. The versions of the applications on those Operating Products shall not be released more than two months after the release on Microsoft Operating Products. This would mean that the MS Office suite, MS Visio, MS Publisher, MS Project, MS Internet Explorer, MS Outlook, MS Outlook Express, etc, would be ported and up to date on the Macintosh, and probably Linux, etc. They must be available for similar pricing as on Microsoft Operating Products.

- Microsoft must port all their major server applications to non-Microsoft Operating Products that hold the four largest server market shares. The versions of the applications on those Operating Products shall not be released more than two months after the release on Microsoft Operating Products. This would mean that the MS Exchange, MS IIS, MS Enterprise Server, MS Small Business Server, MS SQL Server, MS Systems Management Server, MS Content Management Server, MS Commerce Server, MS Proxy Server, MS SharePoint Portal Server, MS BizTalk Server, MS Host Intergration Server, etc. would be ported and up to date on Linux, Sun Solaris, HP HP/UX, etc.

--

Joel Martin -- System Software Engineer
Compaq Computer Corporation
110 Spit Brook Rd, ZKO3-3/U14
Nashua, NH 03062-2698
joelm@zk3.dec.com 603.884.5061